



February 1, 2002

Ms. Jana Prigmore
Assistant District Attorney
County of Dallas
411 Elm Street, Suite 500
Dallas, Texas 75202-3384

OR2002-0492

Dear Ms. Prigmore:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 157566.

The Dallas County Juvenile Department (the "department") received a request for all records regarding two named individuals: a juvenile inmate and a department employee. You claim that the requested information is excepted from disclosure under sections 552.101, 552.102, 552.103, 552.108, 552.111, 552.114, 552.117, and 552.305¹ of the Government Code. We have considered the exceptions you claim and reviewed the submitted information. We have also considered the comments submitted by the requestor. *See* Gov't Code § 552.304 (providing for submission of public comments).

Initially, we address the department's obligations under section 552.301 of the Government Code. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not provide this office with a signed statement or sufficient evidence showing the date the department received the written request.

¹ Please note that section 552.305 is not an exception to the disclosure of information under the Public Information Act. Rather, section 552.305 permits a governmental body to rely on an interested third party to raise and explain the applicability of exceptions in the Public Information Act in certain circumstances. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990). It does not appear that you have notified any party with such an interest of the present records request. Nor has this office received any communication from an interested third party. Therefore, we need not address section 552.305 any further.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). Sections 552.103 and 552.111 are discretionary exceptions under the Public Information Act and do not demonstrate a compelling reason to withhold information from the public. *See, e.g.*, Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions in general). Further, you have not demonstrated a compelling reason to withhold the information under section 552.108. *But see* Open Records Decision No. 586 (1991) (need of another governmental body to withhold information from disclosure provides compelling reason under section 552.108). We accordingly do not address your section 552.103, 552.108, and 552.111 assertions. On the other hand, sections 552.101, 552.102, 552.114, and 552.117 of the Government Code do provide compelling reasons to overcome the presumption of openness. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Therefore, we will address those asserted exceptions.

Next, we note that the Public Information Act (the "Act") generally requires the disclosure of information maintained by a "governmental body." However, while the Act's definition of a "governmental body" is broad, it specifically excludes "the judiciary." *See* Gov't Code § 552.003(1) (A), (B). In determining whether a governmental entity falls within the judiciary exception to the Act, this office looks to whether the governmental entity maintains the relevant records as an agent of the judiciary in regard to judicial, as opposed to administrative, functions. *See* Open Records Decision No. 646 at 2-3 (1996) (citing *Benavides v. Lee*, 665 S.W.2d 151 (Tex. App.--San Antonio 1983, no writ)). In Open Records Decision No. 646 (1996), this office determined that specific records regarding individuals on probation and subject to the direct supervision of a court that are held by a community supervision and corrections department fall within the Act's judiciary exclusion because such records are held on behalf of the judiciary. You indicate that the department holds the juvenile inmate's records at issue here "on behalf of the judiciary and as an agent of the judiciary." Accordingly, the Act does not require release of the information in Sections A1 through A8.

The remaining information pertains to investigations of complaints made against a department employee and this department employee's personnel file. As this information is maintained in regards to the department's administrative, rather than judicial, functions, we will address the arguments you raise with respect to the remaining information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses confidentiality provisions such as section 261.201 of the Family Code. Section 261.201 of the Family Code reads in part as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

We believe the information in Sections B1, B2, C1, and C2 consists of reports, records, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See* Fam. Code sec. 261.103(a)(3) (Texas Juvenile Probation Commission is state agency that operates, licenses, certifies, or registers county juvenile department). Because you have not cited any specific rule that the investigating agency has adopted with regard to the release of this type of information, we assume that no such regulation exists. Given that assumption, the information in Sections B1, B2, C1, and C2 is confidential pursuant to section 261.201 of the Family Code.² *See* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). Accordingly, the department must not release the information in Sections B1, B2, C1, and C2.³

²As we are able to make this determination, we need not address your remaining arguments with respect to this information.

³We note that if the investigation has been referred to the Department of Protective and Regulatory Services (the "department"), a parent who is a requestor may be entitled to access to the department's records. Section 261.201(g) of the Family Code provides that the department, upon request and subject to its own rules:

shall provide to the parent, managing conservator, or other legal representative of a child who is the subject of reported abuse or neglect information concerning the reported abuse or neglect that would otherwise be confidential under this section if the department has edited the information to protect the confidentiality of the identity of the person who made the report and any other person whose life or safety may be endangered by the disclosure.

We will now consider the information submitted in Section D. Section 552.101 incorporates the doctrine of common law privacy. You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as the protection provided by the common law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together.

For information to be protected from public disclosure under common law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Thus, information about the essential features of an employee's participation in a group insurance program funded in part by the state involves him in a transaction with the state and, therefore, is not excepted from disclosure by a right of privacy. On the other hand, information is excepted from disclosure if it relates to a voluntary investment that the employee made in an option benefits plan offered by the city. Open Records Decision No. 600 (1992). We have marked the personal financial information in Sections D1 and D3 that is excepted from disclosure under section 552.101 and common law privacy.

Section 552.117 of the Government Code excepts from disclosure the home addresses, telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential in accordance with section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). The department must withhold this type of information pursuant to section 552.117 only to the extent that the respective employee elected to keep this information confidential prior to the department's receipt of the current records request. You have submitted a copy of the form on which the named employee elected to keep his home address and telephone number confidential. Accordingly, we agree that the department must withhold the named employee's home address and telephone number under section 552.117. We note, however, that the employee did not elect to keep his social security number or family member information confidential. Thus, the department may not withhold the named employee's social security number or family member information under section 552.117. We have marked the information in Sections D1, D2, and D3 that must be withheld under section 552.117.

We note that this employee's social security number may nevertheless be confidential under federal law. A social security numbers may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security number and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that any of the social security numbers in the responsive records are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

We further note that Section D1 contains an Employment Eligibility Verification, Form I-9. Form I-9 is governed by title 8, section 1324a of the United States Code, which provides that the form "may not be used for purposes other than for enforcement of this chapter" and for enforcement of other federal statutes governing crime and criminal investigations. 8 U.S.C. § 1324a(b)(5); *see* 8 C.F.R. § 274a.2(b)(4). Release of this document under the Public Information Act would be "for purposes other than for enforcement" of the referenced federal statutes. Accordingly, we conclude that the Form I-9 in Section D1 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system.

We also note that Section D1 contains an employee W-4 form that must be withheld under section 552.101. Employee W-4 forms are excepted from disclosure under section 552.101 in conjunction with section 6103(a) of title 26 of the United States Code. Open Records Decision No. 600 (1992). The department must therefore withhold the W-4 form in Section D1, which we have marked, under section 552.101.

Sections D2 and D3 appear to contain criminal history record information ("CHRI") generated by the Texas Crime Information Center ("TCIC") or the National Crime Information Center ("NCIC"). The dissemination of CHRI obtained from the NCIC network is limited by federal law. *See* 28 C.F.R. § 20.1; Open Records Decision No. 565 at 10-12 (1990). Federal regulations allow each state to follow its individual law with respect to CHRI it generates. Open Records Decision No. 565 at 10-12 (1990). Sections 411.083(b)(1) and 411.089(a) of the Government Code authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release the information except to another criminal justice agency for a criminal justice purpose. Gov't. Code § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090-.127. Thus, any CHRI generated

by the federal government or another state may not be made available to the requestor except in accordance with federal regulations, and any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code in conjunction with Government Code chapter 411, subchapter F. *See* Open Records Decision No. 565 (1990). We have marked the criminal history information in Sections D2 and D3 that the department must withhold under section 552.101.

Finally, section 552.130 of the Government Code excepts from public disclosure information relating to a driver's license or motor vehicle title or registration issued by an agency of this state. Thus, the department must withhold the driver's license and driver's license number we have marked in Section D3 from public disclosure pursuant to section 552.130.

To summarize: (1) the Act does not require release of the information in Sections A1 through A8; (2) the department must withhold the information in Sections B1, B2, C1, and C2 under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code; (3) we have marked the personal financial information in Sections D1 and D3 that is excepted from disclosure under section 552.101 and common law privacy; (4) we have marked the information in Sections D1 and D3 that must be withheld under section 552.117; (5) the social security numbers in Sections D1, D2, and D3 may be confidential under federal law; (6) the Form I-9 in Section D1 is confidential under section 552.101 and may only be released in compliance with the federal laws and regulations governing the employment verification system; (7) the department must withhold the W-4 form in Section D1, which we have marked, under section 552.101; (8) we have marked the criminal history information in Sections D2 and D3 that the department must withhold under section 552.101; (9) the department must withhold the driver's license and driver's license number we have marked in Section D3 pursuant to section 552.130; and (10) the remaining information in Sections D1, D2, and D3 must be released.⁴

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

⁴One of the documents in Section D1 contains or consists of confidential information that is not subject to release to the general public. *See* Gov't Code § 552.023. However, the requestor in this instance has a special right of access to the information. Gov't Code § 552.023. Because this information is confidential with respect to the general public, if the department receives a further request for this information from an individual other than the named juvenile or his authorized representative, the department should again seek our decision.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle
Assistant Attorney General
Open Records Division

KAE/sdk

Ref: ID# 157566

Enc: Submitted documents

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